

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION**

**RAMON ARMAS BORROTO, JR.**

Plaintiff,

vs.

**Case No. 5:04CV165-RH/WCS**

**L. MCDONALD, PATE,  
MCKENZIE and KENT.**

Defendants.

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**Defendants' Response in Opposition to "Motion for Access to Witness"**

Defendants McDONALD, PATE, McKENZIE, and KENT, through undersigned counsel, respond in opposition to Plaintiff's "Motion for Access to Witness." Doc. 91.

Defendants state the following:

1. Plaintiff, a state prisoner at Florida State Prison classified as a CM II inmate, seeks to correspond with another prisoner: David Brooks, #982838. Brooks is located at Santa Rosa C.I. and is classified as a CM III inmate. Plaintiff states that Brooks is his witness, and that the institution has denied Plaintiff's request to correspond with Brooks. Doc. 91.

2. In the past six years, Plaintiff has received 58 disciplinary reports; one for "mail violations" in 2003, one for "attempt to conspire" in 2003, and four for possession of contraband. See Defendants' Appendix A.

3. In the past seven years, David Brooks has received 37 disciplinary reports; one for attempt to conspire, two for possession of contraband. See Defendants' Appendix B.

4. Plaintiff was telephonically present at and participated in the deposition of David Brooks on January 4, 2007.

5. Defendants oppose Plaintiff's motion pursuant to Rule 33-210.101(7), Fla. Admin. Code.

**Memorandum of Law**

Rule 33-210.101(7) Florida Administrative Code, states:

Correspondence with inmates of other penal institutions shall be subject to the prior approval of the warden of each institution. Either warden shall withhold approval if he finds that the intended correspondence would present a substantial threat of interference with the security, order or rehabilitative objectives of his institution.

Therefore, rule 33-210.101(7), makes it discretionary with the Warden as to whether, in his (or her) judgment, the proposed correspondence between two inmates at different institutions "would present a substantial threat of interference with the security, order or rehabilitative objective of his institution." Indeed, the rule does not even purport to authorize a Warden to approve *individual inmates* to correspond with one another. Rather, the intended correspondence is the subject of the approval by the Warden.

A prisoner retains only those rights "that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822, 94 S. Ct. 2800, 41 L. Ed. 2d 495 (1974). The obvious security interests supporting the restriction on inmate-to-inmate correspondence are well established. As recognized by the United States Supreme Court in Shaw v. Murphy, 532 U.S. 223, 231 (U.S. 2001):

Prisoners have used legal correspondence as a means for passing contraband and communicating instructions on how to manufacture drugs or weapons. See Brief for State of Florida et al. as Amici Curiae 6-8; see also Turner v. Safley, 482 U.S. 78,] at 93 ("Prisoners could easily write in jargon or codes to prevent detection of their real messages"). The legal text also could be an

excuse for making clearly inappropriate comments, which "may be expected to circulate among prisoners," Thornburgh v. Abbott, 490 U.S. 401, 412, 104 L. Ed. 2d 459, 109 S. Ct. 1874 (1989), despite prison measures to screen individual inmates or officers from the remarks.

Plaintiff was telephonically present at the deposition of David Brooks on January 4, 2007. Plaintiff was given an opportunity to cross-examine Brooks at that time. Therefore, Plaintiff has had adequate opportunity to hear the testimony Brooks has provided in this case, and has failed to show that his desire to correspond with Brooks outweighs the security interests the of the Department.

In that a restriction on inmate-to-inmate correspondence is reasonably related to legitimate penological interests, this Court should not interfere in the decisions of prison administrators in this case. See Shaw, 532 U.S. at 225 (citing Turner, 482 U.S. 78, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987)). The "problems of prisons in America are complex and intractable," and because courts are particularly "ill equipped" to deal with these problems, [citation omitted], we generally have deferred to the judgments of prison officials in upholding these regulations against constitutional challenge. Shaw, 532 U.S. at 229.

WHEREFORE, Defendants respond in opposition to Plaintiff's in opposition to Plaintiff's "Motion for Access to Witness." Doc. 91.

Respectfully Submitted,

**BILL McCOLLUM**

Attorney General

s/ Joy A. Stubbs

**JOY A. STUBBS**

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**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: RAMON BORROTO, DC# X27467. Florida State Prison, 7819 NW 228th Street, Raiford, FL 32026 on the 19th day of February 2007.

s/ Joy A. Stubbs

JOY A. STUBBS